

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

Civil Action # \_\_\_\_\_

BUNCOMBE COUNTY TOURISM  
DEVELOPMENT AUTHORITY,

Plaintiff,

vs.

**NOTICE OF REMOVAL**  
(28 U.S.C. § 1446)

L & H SIGNS, INC.

Defendant.

---

**TO: The United States District Court for the Western District of North Carolina,  
Asheville Division:**

Defendant L&H Signs, Inc. ("L&H") through its attorneys, McGuire, Wood & Bissette, P.A., files this Notice of Removal of the above-captioned action in the United States District Court for the Western District of North Carolina, Asheville Division, from the North Carolina General Court of Justice, Superior Court Division in the County of Buncombe, North Carolina, where the action is now pending, as provided by 28 U.S.C. § 1446, and states that:

1. The Plaintiff's state court complaint alleges that the Defendant breached a contract with the Plaintiff, engaged in actual and constructive fraud against the Plaintiff, made negligent misrepresentations to the Plaintiff, engaged in unfair and deceptive trade practices in violation of N.C.G.S. 75-1.1 *et seq.* and engaged in other actions that entitle Plaintiff to recover punitive damages from Defendant. Compl. ¶¶ 15-22, 23-29, 30-35, 36-40 and 41-42.

2. The complete diversity of the parties is indicated on the face of the Complaint. Compl. ¶¶ 1-2.

3. The Complaint alleges that the Plaintiff is a “public authority created by the Buncombe County Board of Commissioners pursuant to specific statutory authority charged with promoting the development of travel and tourism within Buncombe County, North Carolina”. Compl. ¶ 1.

4. The Complaint further alleges that Defendant L&H is a “corporation organized and existing under the laws of the State of Pennsylvania transacting business in the State of North Carolina specifically in Buncombe County”. Compl. ¶ 2.

5. The face of Plaintiff’s complaint also indicates an amount in controversy of in excess of \$75,000. Compl. ¶14.

6. Because this dispute involves citizens of different states where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, the United States District Court for the Western District of North Carolina has jurisdiction under 28 U.S.C. § 1332, and this action may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

7. The Complaint was served upon the Defendant on February 22, 2011. Exhibit B

8. This Notice of Removal is being timely filed within thirty (30) days of that date in accordance with the requirements of 28 U.S.C. § 1446.

9. The Defendant has complied with Local Rule 73.1(B) by serving a Case Assignment Notice, the Notice of Availability of a Magistrate Judge to Exercise Jurisdiction, and the Joint Stipulation of Consent to Exercise of Jurisdiction by a United States Magistrate Judge form on all parties with this notice of removal.

10. The Defendant has complied with Local Rule 3.1 by paying the required filing fee. The Defendant is also submitting a completed civil action cover sheet.

11. A copy of all process, pleadings, and orders served upon the Defendant is attached hereto:

- a. The Summons and Complaint served upon Defendant are attached as **Exhibit A**.
- b. The Service of Process Summary Transmittal Form from the Registered Agent of Defendant is attached as **Exhibit B**

12. A copy of this Notice of Removal will be filed promptly with the Clerk of Buncombe County Superior Court, as required by 28 U.S.C. § 1446(d). It will be attached to a Notice of Filing of Notice of Removal, the form of which is attached as **Exhibit C**.

WHEREFORE, the Defendant respectfully requests that this action be deemed removed to this Court.

THIS the 22<sup>nd</sup> day of March, 2011.

**MCGUIRE, WOOD & BISSETTE, P.A.**

By: /s/ M. Charles Cloninger  
M. Charles Cloninger, Esq.  
NC Bar No. 10281  
Hayley R. Roper  
NC Bar No. 38465  
48 Patton Ave., Asheville, NC 28801  
P.O. Box 3180, Asheville, NC 28802  
Telephone: (828) 254-8800  
Facsimile: (828) 252-2438  
Email: [ccloninger@mbavl.com](mailto:ccloninger@mbavl.com)  
[hroper@mbavl.com](mailto:hroper@mbavl.com)

*Counsel for L&H Signs, Inc.*

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the attached Notice of Removal was served by [ ] hand delivery or by leaving same with a responsible employee or partner; by [x] depositing a copy enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service; by facsimile [ ], or [ ] via electronic case filing:

James Gary Rowe  
Attorney for Plaintiff  
Kelly & Rowe, P.A.  
P.O. Box 2865  
Asheville, NC 28802

THIS the 22<sup>nd</sup> day of March, 2011.

**MCGUIRE, WOOD & BISSETTE, P.A.**

By: /s/ M. Charles Cloninger  
M. Charles Cloninger, Esq.  
NC Bar No. 10281  
Hayley R. Roper  
NC Bar No. 38465  
48 Patton Ave., Asheville, NC 28801  
P.O. Box 3180, Asheville, NC 28802  
Telephone: (828) 254-8800  
Facsimile: (828) 252-2438  
Email: [ccloninger@mbavl.com](mailto:ccloninger@mbavl.com)  
[hroper@mbavl.com](mailto:hroper@mbavl.com)

*Counsel for L&H Signs, Inc.*

ND: 4844-9511-1944, v. 1